IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-7284

DAVID R. WILLIAMS,
Plaintiff-Appellant,

v.

EASTSIDE MENTAL HEALTH CENTER, INC.,
a corporation,
Defendant-Appellee.

**Appeal From The United States District Court
For The Northern District Of Alabama**

**ON PETITION FOR REHEARING
AND SUGGESTION FOR REHEARING EN BANC**

(Opinion March 5, 1982, 11 Cir., 198__, ____F.2d____).

**Filed
May 13 1982**

Before: TUTTLE, HILL and JOHNSON, Circuit Judges.

PER CURIAM:

(√) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ James C. Hill
JAMES C. HILL
United States Circuit Judge

DAVID R. WILLIAMS,
Plaintiff-Appellant,

v.

EASTSIDE MENTAL HEALTH CENTER, INC.,
a corporation,
Defendant-Appellee.

No. 81-7284

United States Court Of Appeals,
Eleventh Circuit.

March 5, 1982.

Reeves & Still, Edward Still, Birmingham, Ala., for plaintiff-appellant.

Beate Bloch, Associate Sol., Gregory O'Duden, Atty., U.S. Dept. of Labor, Div. of Fair Labor Standards, Washington, D.C., for Secretary of Labor amicus curiae.

Frank O. Hansen, Jr., Birmingham, Ala., for defendant-appellee.

J. Fairly McDonald, III, Asst. Atty. Gen., Ala. Dept. of Mental Health, Montgomery, Ala. for Ala. Dept. of Mental Health amicus curiae.

Before TUTTLE, HILL and JOHNSON, Circuit Judges.

TUTTLE, Circuit Judge:

This appeal involves a suit brought by the plaintiff-appellant against his employer for an award of back pay allegedly owed pursuant to the minimum wage provisions of the Fair Labor Standards Act [FLSA], 29 U.S. C.A. § 206 (1978). The district court, 509 F. Supp. 579, held that under the principles set out in *National League of Cities* v. *Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), the defendant-appellee was exempt from the FLSA's minimum wage provisions. For the reasons that follow, we reverse.

I.

The plaintiff David R. Williams was an employee at the Eastside Mental Health Center [Eastside] from February, 1977 until May, 1979. Williams worked in Eastside's Transitional Home Program. This program operates as a type of halfway house, providing psychological rehabilitation services for individuals recently released from state mental hospitals or persons who might otherwise be heading for commitment to a state mental hospital. Eastside hired Williams as a live-in home manager. He was required to work in 96-hour shifts, residing at the home for four days, followed by four days off. Eastside paid Williams a fixed salary, and considered him to be on duty 24 hours per day for the four working days. In fact he was required to be at the home during the four working days only from 5 p.m. until 8 a.m. the following morning. During the day he was allowed to leave the home if he was not needed. As a home manager Williams' primary function was to oversee and assist the training of residents in basic socialization skills and some routine daily activities.

Sections 206 and 207 of the FLSA require all employers subject to the Act to pay employees a certain minimum wage for the first 40 hours worked in a given week, and one and one-half times the regular wage for any time worked over the 40-hour base. *See* 29 U.S.C.A. §§ 206, 207 (1978). There is some dispute in the record from the court below regarding the number of hours Williams worked during his employment at Eastside. Assuming the facts as alleged by the plaintiff, the losing party in the district court's summary judgment order, the salary Williams received during his entire employment at Eastside was about $27,000 short of the minimum required under the FLSA.

II.

We must begin by describing the development and character of the defendant-appellee in this case, the Eastside Mental

Health Center.[1] The state of Alabama first began treating mental patients in its state hospitals in 1861. Up through the 1960's Alabama provided comprehensive mental health services in state institutions such as Bryce Hospital, Searcy Hospital, and Partlow State School. In addition the state helped fund some smaller community mental health centers.

In 1965 the State Department of Public Health completed a two-year, federally financed study to plan for statewide provision of mental health services. This study recommended the establishment of a network of smaller, but comprehensive mental health centers throughout the state. Subsequently the state passed legislation creating the Department of Mental Health [the Department], *see* Ala.Code § 22-50-1 (1977), and enacted specific legislation to govern the creation and operation of regional authorities to administer a network of community mental health centers. *See* Ala.Code § 22-51-1 (1977). All boards and corporations established pursuant to the provisions of this Act are statutorily designated as public corporations. Ala.Code § 22-51-2 (1977). The Department then divided the state into mental health regions, and established mental health authorities under section 22-51-2 to organize and administer the provision of services for each region.

In 1969 the Jefferson-Blount-St. Clair Mental Health Authority [hereinafter "the Authority" or "the Jefferson Authority"] was incorporated as a public corporation under section 22-51-2 as the Authority for coordinating mental health services in the three named counties. The Authority divided its region into four catchment areas each with a population of roughly 185,000 persons, and determined that adequate services could be provided if there were established one comprehensive mental health center in each catchment area. Three such centers were in fact created, one of which was Eastside

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[1] For reasons that are made clear below, see pp. 676-678 *infra*, the issue of state sovereignty upon which the case turns requires a consideration of the nature of the entity claiming sovereignty, as well as the nature of its chief functions.

Mental Health Center, the defendant-appellee in this case. The other two were the Western Mental Health Center and the University Mental Health Center. These latter centers were established as public corporations under section 22-51-2.

Eastside opened its doors as a community mental health center on July 15, 1974. It operated out of a building purchased with state, county and city funds. Unlike its counterpart centers operating within the three-county region, Eastside was initially opened as an unincorporated service unit for the Jefferson Authority wholly owned and operated by the Authority. The Western and University Centers subsequently lodged a complaint that there was a conflict of interest in the Authority operating a center that was competing for funds with the other two centers.[2] In response to this complaint, the Authority then incorporated Eastside as a separate, non-profit entity under the Alabama non-profit statute. *See* Ala.Code § 10-3-1 (1977).[3]

As a non-profit corporation, Eastside is structured similarly to most private, non-profit insitutions. Eastside has its own articles of incorporation and set of by-laws. These govern the general structure and management of the center, including appointment of its administrative board of directors. This board is responsible for seeing that adequate funds, staff and equipment are provided for the Center. The board also sets all

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[2] Although the record is not clear on this point, it appears that the Jefferson Authority had some control over the dispersal of state funds to the three mental health centers in its region.

[3] The court below determined that Eastside could not be established as a public corporation under section 22-51-2 because the community mental health centers statute allows only one public facility per county, and another center had already filed for incorporation "in the three-county area of Jefferson, Blount and St. Clair." *See* Mem. Op. filed March 24, 1981. Admittedly it is not clear how the statutory maximum had been reached if only one center had applied in a three-county area. Apparently each of the three entities, the Authority, and Western and University Mental Health Centers, had filled the statutory quota for each of the three counties.

major policies of the Center. Finally the board selects, hires, and fires the administrative staff of the Center.

Under the by-laws there are 14 separate agencies responsible for appointing the 18 members of Eastside's board of directors. Four directors are appointed by the Jefferson Authority; the other fourteen directors are appointed by a mix of state or public agencies and private, non-profit organizations.[4] The parties in the present controversy stipulated in the district court that 10 of the appointing organizations should be considered as state or public entities and six as private, non-profit groups. The status of the remaining two was to be determined by the district court. The by-laws also provide that the Jefferson Authority must ratify the appointment of all board members, including those appointed by private organizations. There is no indication in the by-laws that any of the appointing agencies or the Jefferson Authority has the power to remove a board member once appointed.

So far as disclosed by the record, all board members are to be motivated solely by what they believe is best for the Center and its clientele. They are not expected to represent or vote for policies favoring their appointing agency. Thus as long as state regulations are not violated, the administration of the institution is not subject to the legal dictates of any "official" state agency or officer.

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[4] The Health Departments of Jefferson, Blount, and St. Clair counties appoint one member of the board in rotation; similarly, the three counties' Departments of Pensions and Security, and the three counties' Associations for Retarded Citizens, each appoints one member in rotation. In addition the three County Commissioners each appoints a member, the three appointees serving concurrently. Finally, the following agencies and organizations each appoints one board member: the Birmingham City Council, the Council for Exceptional Children, the Baptist Medical Center, the Hill Crest Foundation, Inc., the East End Memorial Hospital Association, the Mental Health Association of Jefferson County, the Occupational Rehabilitation Center, and the Birmingham Regional Health Systems Agency.

Eastside's relationship to the Jefferson Authority and to the State of Alabama in general is controlled partially by provisions in the by-laws and articles of incorporation, partially by state licensing standards, and partially by the contracts it maintains with various state agencies for the provision of mental health services to its catchment area. In addition, federal regulations prescribe certain of the Center's activities, as Eastside receives about 38 percent of its funds from the federal government.

All mental health centers in Alabama, including Eastside, are subject to considerable state monitoring. Eastside must comply with the state's Standards for Community Mental Health Centers or be subject to revocation of its certification. Changes in the Center's articles of incorporation or by-laws must be approved by the Jefferson Authority. The Authority must also approve the Center's budget. Eastside is subject to auditing by both state and federal officials, and state examiners conduct frequent site visits to inspect its operations. Eastside also participates in Alabama's State Retirement System, and is exempt from state sales taxes. Finally, upon dissoluton of the corporation, the articles of incorporation provide that all of Eastside's assets are to vest in the Jefferson Authority.

Eastside's general purpose is to provide comprehensive mental health and mental retardation services to a prescribed geographic area. The Center provides both inpatient and outpatient care, emergency care, consultation and educational services, as well as specialized services for children, elderly persons, and persons with alcohol or drug-related problems. In addition the Center runs the Transitional Home Program for people going to or about to return from a state hospital. The Center assists the local probate court in screening persons for state institutions. Finally, the Center provides some services for adult mentally retarded individuals. Some of these programs involve psychotherapeutic counseling, as well as prescribed medicine treatments. Eastside provides each of the services through contracts with schools, hospitals, nursing homes, or some other state facility or agency.

At present there are 25 community mental health centers in the State of Alabama. Twenty of these Centers are public corporations under Ala.Code § 22-51-2; two are operated directly by local governmental bodies. The remaining three are section 10-3-1 nonprofit corporations such as Eastside Mental Health Center.

III.

The defendant-appellee Eastside Mental Health Center claims exemption from the minimum wage provisions of the FLSA under the principles set out in the case of *National League of Cities* v. *Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976). Appellee asserts that the *Usery* case requires FLSA exemption for all state or public agencies performing traditional government functions. The appellee argues that because Eastside is so thoroughly allied with the State of Alabama, and furthermore because it is engaged in an ordinarily governmental function, namely, the provision of mental health services to the public, the *Usery* test has been satisfied and exemption is appropriate. We disagree with appellee's understanding of *Usery* and its corollary principles, and for the reasons that follow we hold that Eastside should not be exempt from the FLSA.

The overriding constitutional concern faced by the court in *Usery*, and thus by this Court in the present case, is the problem of affixing a clear and workable boundary between the two sovereignties in our federal system. The problem is amplified as always by the necessity that the result adhere to the facts before us while at the same time serve as a clear guide for future applications. And most importantly we are faced with the task of reaching a determination that is consonant with constitutional precedents.

The existing precedents make clear that the notion of state sovereignty is as important to a truly federal system of government as it is hard to define, let alone pigeonhole into any one constitutional provision. At least since the case of *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 410, 4 L.Ed. 579 (1819),

the Court has recognized that state and federal powers must be preserved in a delicate equipoise in a federal system such as we have. The need for this balancing of state and federal power "rests on the conviction that each government, in order that it may administer its affairs within its own sphere, must be left free from undue interference by the other." *Metcalf & Eddy* v. *Mitchell*, 269 U.S. 514, 523, 46 S.Ct. 172, 174, 70 L.Ed. 384 (1926) (citing *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat) 316, 4 L.Ed. 579 (1819)). There exist certain constitutional provisions that emphatically, though perhaps ambiguously, address the necessity of protecting the sovereignty and power of the individual state governments. *See Hans* v. *Louisiana*, 134 U.S. 1, 21, 10 S.Ct. 504, 509, 33 L.Ed. 842 (1890) (Eleventh Amendment protects states against unconsented suits even if they arise under the Federal Constitution or laws of the United States); *Hodel* v. *Virginia Surface Min. & Rec. Ass'n*, ___ U.S. ___, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981) (Tenth Amendment contains limits on federal power to regulate states as states).[5]

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[5] The ambiguity of Tenth Amendment case law is merely coextensive with the ambiguity of its language. *Compare United States* v. *Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941) (Tenth Amendment states but a truism), *with Fry* v. *United States*, 421 U.S. 542, 547 n.7, 95 S.Ct. 1792, 1795 n.7, 44 L.Ed.2d 363 (1975) (Tenth Amendment declares policy that Congress may not exercise power so as to impair the states' integrity or their ability to function effectively in a federal system), *National League of Cities* v. *Usery*, 426 U.S. 833, 842, 96 S.Ct. 2465, 2470, 49 L.Ed.2d 245 (1976)(relying on Tenth Amendment case precedents to strike down FLSA as applied to state and municipal governments), *and Hodel* v. *Virginia Surface Min. & Rec. Ass'n*, ___ U.S. ___, ___, 101 S.Ct. 2352, 2366, 69 L.Ed.2d 1 (1981) (citing Tenth Amendment as embodying certain limits on federal Commerce Clause regulations).

Even Eleventh Amendment jurisprudence suffers from substantial confusion and complexity. For example, the principle of state immunity from unconsented suits has been qualified or at least restricted by a countervailing principle distinguishing suits against a state from suits against an individual officer of the state. The latter

Resort to specific constitutional provisions, or even individual case precedents, is nevertheless inadequate to a determination of the proper balance to be struck between the state and federal sovereignties. "Experience has shown that there is no formula by which the line may be plotted with precision in advance." *Metcalf & Eddy* v. *Mitchell*, 269 U.S. at 523, 46 S.Ct. at 174 (1926). Indeed such an approach is apparently inappropriate. In the most recent judicial attempt to determine the appropriate state-federal relationship, the Court in *Usery* case relied upon a wealth of case precedents involving issues ranging from intergovernmental tax immunity, to federal regulation of commerce, to state control over the location of its state capitol. *See Metcalf & Eddy* v. *Mitchell*, 269 U.S. 514, 46 S.Ct. 172, 70 L.Ed. 384 (1926); *United States* v. *California*, 297 U.S. 175, 56 S.Ct. 421, 80 L.Ed. 567 (1936); *United States* v. *Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941); *Coyle* v. *Oklahoma*, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 (1911). In line with the *Usery* precedent, we thus feel it appropriate, indeed constitutionally incumbent upon us, to look to a range of case sources interpreting a variety of constitutional provisions and penumbras in determining how to strike the proper balance in the present case.

In determining whether a state's sovereignty has been unduly and unconstitutionally impaired by federal regulation, the courts have in the past considered several factors. First, they have looked to the nature of the entity being regulated. In *Usery* the Court acknowledged that attributes of state sovereignty emanating from the federal structure of our government put the states on a different footing from purely

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type of suits, at least in some circumstances, is not barred by the Eleventh Amendment. *Compare Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908) (establishing equitable cause of action against state officers in their individual capacities notwithstanding Eleventh Amendment) *with Edelman* v. *Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974) (qualifying Ex Parte Young in situations where remedy requires payment of state funds as compensation for past damages).

private entities with respect to federal regulation of their activities. Citing *Coyle* v. *Oklahoma*, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 (1911), the Court in *Usery* declared that even some affirmative grants of constitutional power to the federal government must be limited when national regulations directly affect a state or its political subdivisions in carrying out normal governmental activities. *National League of Cities* v. *Usery*, 426 U.S. at 845, 855-56 n.20, 96 S.Ct. at 2471, 2475-76 n.20 (1976).

Of course the determination that a regulation affects a state or its political subdivision is not always a simple one to make. There exist many public or quasi-public agencies the status of which, for purposes of determining a state sovereignty question, is not easy to characterize. Frequently the courts have faced similar classification problems when deciding cases in the areas of state action doctrine, *see, e.g.*, *Evans* v. *Abney*, 396 U.S. 435, 90 S.Ct. 628, 24 L.Ed.2d 634 (1970), § 1983 litigation, *see, e.g.*, *Adickes* v. *Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970), and Eleventh Amendment sovereign immunity questions, *see, e.g.*, *Edelman* v. *Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).[6]

At issue in *Usery* was the constitutionality of the Fair Labor Standards Act when applied to wages paid by state and subordinate political subdivisions to their employees. The Court held that this would seriously impair the right of the state to carry out its normal functions. It was only the payment of

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[6] The Court in neither the *Usery* not the *Hodel* case had to face this issue, as the nature of the regulated entities was not disputed in either case. In *Usery* many states were party to the suit, and the issue was whether the FLSA as applied directly to the states was within Congress' powers. *National League of Cities* v. *Usery*, 426 U.S. at 854, 96 S.Ct. at 2475 (1976). Similarly in *Hodel* the states were parties, and the Court did not question their status as states, but rather doubted that the states were being directly regulated by the federal government. *Hodel* v. *Virginia Surface Min. & Rec. Assn.*, 101 S.Ct. at 236 (1981).

wages by *state or subordinate political bodies* that was involved there.[7] The Court in *Hodel* v. *Virginia Surface Min. & Rec. Assn.*, *supra*, interpreted *Usery* as requiring that, *inter alia*, the federal regulation in question must address the "States as States" in order for there to be an infringement of state sovereignty. *Hodel* v. *Virginia Surface Min. & Rec. Assn.*, 101 S.Ct. at 2366 (1981).

Beyond that we think the relevant inquiry is the extent of control the states maintain over the activities and administration of the entity in question. Indeed it seems to us appropriate to borrow from principles established by the court in NLRB cases involving the issue of whether a particular entity is a political subdivision and is therefore exempt from the provisions of the National Labor Relations Act, 29 U.S.C.A. § 152(2) (1973). *See NLRB* v. *Natural Gas Utility Dist.*, 402 U.S. 600, 91 S.Ct. 1746, 29 L.Ed.2d 206 (1971).[8] In *NLRB* v. *Natural Gas*, the Court in a close case considered relevant whether the entity seeking exemption was administered by individuals responsible to public officials or to the general electorate. *Id.* at 605, 91 S.Ct. at 1749-50. Although these cases turn on the construction of the Labor Relations Act and not on constitutional considerations of state sovereignty, we find them helpful in our inquiry, and until the Court holds otherwise we will adopt this approach.

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[7] That subordinate bodies are included in the *Usery* exemption is a principle which derives from explicit language in the opinion, as well as by implication, at least insofar as the term relates to "such areas as fire protection, police protection, sanitation, public health, and parks and recreation." *National League of Cities*, *supra*, 426 U.S. at 851, 96 S.Ct. at 2474. The opinion specifically included "political subdivisions" as entities for which classification of sovereignties is appropriate. *Id.* at 855, n.20, 96 S.Ct. at 2476, n.20. Additionally, the Court mentioned state schools, hospitals, and other "subordinate arms of state government" as properly labelled sovereigns. *Id.*

[8] We base our analogy to the labor cases on the simple fact that the precise term "political subdivision" is used in both the *Usery* case and the NLRB cases.

Second, in deciding cases involving possible federal infringement of state sovereignty, the courts have assessed the function of the entity being regulated. In *Usery* the Court repeatedly emphasized that the FLSA directly affected a function that was traditionally a governmental activity, namely, the structuring of wage and hour policies. *National League of Cities* v. *Usery*, 426 U.S. at 845-46, 851-52, 96 S.Ct. at 2471-72, 2474 (1976). The Court alternately characterized this function as traditional, essential, fundamental, and integral. *Id.* at 845, 851, 96 S.Ct. at 2471, 2474. The Court listed several other functions that could be so characterized, including fire prevention, police protection, sanitation, public health, and parks and recreation. *Id.* at 851, 96 S.Ct. at 2474. Moreover, in overruling *Maryland* v. *Wirtz*, 392 U.S. 183, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968), the Court implicitly included the operation of public schools and hospitals as traditional functions of the states. 426 U.S. at 855, 96 S.Ct. at 2476. In *Hodel*, the Court listed the traditional nature of the function involved as the second condition precedent to a finding that a state's sovereignty has been constitutionally infringed by federal regulation. *Hodel* v. *Virginia Surface Min. & Rec. Ass'n*, 101 S.Ct. at 2366 (1981).

The third and final indicium of state sovereignty frequently considered by the courts is the nature of the federal regulation involved. The Court in *Usery* discussed at length the effects on state government operations that would result from application of the FLSA. The Court focused on the significant costs, both in terms of money and in terms of necessary restructuring of employment operations, that states would have to bear if forced to comply with the FLSA. *National League of Cities* v. *Usery*, 426 U.S. at 846-51, 96 S.Ct. at 2471-74 (1976). Similarly in *Fry* v. *United States*, the Court cited the unintrusive nature of the Economic Stabilization Act as a primary reason for upholding its application to state employees. *Fry* v. *United States*, 421 U.S. at 548, 95 S.Ct. at 1796 (1975). Finally, in the intergovernment tax immunity cases, the Court has been guided by an assessment of the interference with state government functioning. *See Helvering* v. *Gerhardt*, 304 U.S. 405 at 419-20, 58 S.Ct. 969 at 974-75, 82 L.Ed. 1427 (1938).

IV.

Before applying the foregoing principles to the facts of the case before us, we may well benefit from a quick study of Immanuel Kant's On the Old Saw: That May be Right in Theory but it Won't Work in Practice (E. B. Ashton trans. 1974). Precise legal guidelines easily applicable to particular fact situations do not exist in cases such as this involving broad constitutional concepts such as that of sovereignty. As will become clear shortly, our job is compounded in this case by the borderline nature of the facts before us. Nevertheless we are convinced that upon a consideration of all the factors, on balance it seems clear that Eastside is not and should not be treated as a sovereign entity in our federal system.

The determinative fact in this case is simply that the entity with which we are dealing is not a state or a political subdivision of a state as defined by the Court in *Usery* and in other cases involving similar issues. Eastside Mental Health Center is not the State of Alabama, nor is it an agency or department of the State of Alabama. Indeed no party contends otherwise.

Moreover as it currently exists under Alabama state law, Eastside is not a public agency or corporation. As was noted earlier, the Center is incorporated as a non-profit institution under section 10-3-1, rather than as a public corporation under section 22-51-2 of the Alabama Code. The Center is in fact distinct from many of the other community mental health centers operating in the State of Alabama in precisely this regard. For whatever reason, Alabama did not elect to operate Eastside as a state institution with state employees; instead it set up a not for profit corporation with a separate, independent board of directors to administer it. Whatever may have been the state's reason for doing it this way, it must live with the consequences. It cannot claim an immunity based on a condition which itself sought to avoid.

Here, then, lies the greatest difference between *Usery* and the facts of this case. Here we are concerned with application of

the FLSA wages paid by a not for profit corporation which operates by contact with a public corporation of the State of Alabama and by contract with other entities. There is thus no impact on the state in its relation with its own employees. Thus, the FLSA does not affect the "States as States."

For such reasons as were satisfactory to it, the State of Alabama elected not to employ any persons to operate institutions performing such services as are performed by Eastside. By making this election it removed the agency from the protection of the Tenth Amendment as delineated in *Usery* and *Hodel*. Instead, certain individuals organized a corporation under the general legislative authorization used by other citizens to organize all educational, religious and other eleemosynary institutions, which thereafter contracted with Jefferson, itself an independent corporation, to carry out these functions.

For purposes of the sovereignty issue before us, Eastside is thus best characterized as a private, non-profit corporation, licensed in the State of Alabama to perform the services of a community mental health center, and carrying out such services by means of ordinary contracts with various state and local agencies and institutions. It is thus analogous to a normal nonprofit institution in its basic corporate structure, while at the same time analogous to a private business doing contracting work for the state in its basic business operations.

Although the Center is subject to substantial state regulation, this fact does not change our characterization. With respect to the state licensing regulations, we find it difficult to distinguish Eastside from a variety of private corporations and professional individuals that are subject to similar state control pursuant to licensing statutes. Such controls are normal means by which states effectuate public policies through the regulation of private entities. These licensing controls do not, however, somehow magically transform the fundamental nature of the licensed entity into a public agency or official.

The additional control exerted by the Jefferson Authority over Eastside's budget, board of directors, and residual assets upon dissolution, are not so significant as to justify characterizing the Center as an arm of the state. With respect to the board of directors, not only does the State of Alabama not have control over the appointment of nearly one-half of the board membership, in addition it has no power whatsoever to dismiss any of the board appointments. Members of the board do not serve as representatives of the state or any of its agencies. For this latter reason it is clear that no member of the administrative board is directly responsible to a public official or to the general electorate. Under the test set out in *NLRB* v. *Natural Gas Utility Dist.*, 402 U.S. 600, 91 S.Ct. 1746, 29 L.Ed.2d 206 (1971), this factor indicates that Eastside is not a political subdivision of the State of Alabama. The other controls, while perhaps uncommon in the context of normal private corporations contracting with the states, must be viewed simply as stringent licensing standards necessary to the effective implementation of the state's police power in the mental health arena.

If the State of Alabama chooses to foster the provision of mental health services by allowing Eastside and similar mental health centers certain fringe benefits, including sales tax exemption and participation in the State Retirement System, this does not mean that Eastside should be viewed as an arm of the state. Alabama either provides or legally may provide similar benefits to entities that are declaredly not public agencies.[9]

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[9] The State of Alabama does in fact grant sales tax exemption to many other private businesses. *See* Ala.Code § 40-23-4 (1975). In addition, membership in the State Retirement System is not limited to state agencies, as it is also available to employees of a "public or quasi-public organization." *See* Ala.Code § 36-27-6 (1975). Assuming Eastside is considered a quasi-public organization, it may participate in the retirement system and yet still not be a state or public agency within the meaning of the term as used in the *Usery* case.

Our conclusion that the Eastside Mental Health Center is not a state agency or a political subdivision of the state is sufficient under the *Hodel* test for us to hold that it may not be exempt from the FLSA. Just as in *Hodel*, we need not reach the other factors in the sovereignty test if we initially find, as we do here, that the entity with which we are dealing is not a state. *See Hodel* v. *Virginia Surface Min. & Rec. Ass'n*, 101 S.Ct. at 2369 (1981). For this reason it is not necessary for us to consider the extent of the FLSA's effect on Eastside's function of granting mental health services, nor need we decide whether such function is traditional or essential. In view of the significance of the term "integral" used in the *Usery* opinion, however, we think it important to briefly discuss the application of this concept to the facts of this case. In short we believe that even if the State of Alabama had chosen to operate Eastside as a state agency, the Center is not performing an "integral" function and thus the *Usery* exemption would not apply.

In *Usery* the Court used the term "integral" to define the nature of a state operation that is protected by considerations of sovereignty. "We hold that insofar as the challenged amendments [of the FLSA] operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. 1, § 8,cl.3." 426 U.S. at 852, 96 S.Ct. at 2474 (1976) (footnotes omitted).[10]

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[10] We believe that the term "integral" relates to the nature of the state function to be given sovereign protection. Admittedly the Court in *Usery* appears in the quoted passage to differentiate an "operation" from a "function." It may be said that the phrase "integral operation" refers to the manner in which the state chooses to carry out its traditional function, including the state's structuring of its wage policies for those employees carrying out such functions. Here the term "integral" would refer both to the fact that the setting of wage policies is *crucial* to the state's ability to carry out effectively a particular function, and to the fact that such policies affect the *whole* of the state's operations, in this case, all employees of the state.

Dictionary definitions indicate that the adjective "integral" signifies something that is a part of or is in itself a whole. See *Webster's New International Dictionary* 1290 (1936). We think an integral function is in this context one that a state performs for or in relation to the society at large, the state as a whole. One such function is the state's taxing power; another is the state's function of enacting laws for the public good through its legislative body. For purposes of determining whether a particular function is "integral" in the context of sovereignty decisions such as the one before us, we think it therefore helpful to look at whether the federal regulation in question affects a state function in a way that reverberates throughout the society as a whole.[11]

For example, any interference with a state's provision of police protection to its citizenry, or its ability in general to pass laws in its legislature, clearly affects all people in the state. Such integral functions may be contrasted with those that, while perhaps traditional, are nevertheless not functions which relate to the entire state populace. An example of a non-integral function is a state's enactment of particular regulations

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Under this view, it is of course true that any case such as the one before us involving the application of the FLSA to what is arguably a state entity involves an interference with the state's ability to structure its *integral* operations. In our opinion, however, the term "integral" also applies to the type of governmental function that is to be protected under a concept of state sovereignty.

At least one commentator agrees that the term "integral" is used in *Usery* to modify the type of state function involved. *See* Note, Taking Federalism Seriously: Limiting State Acceptance of National Grants, 90 Yale L.J. 1694, 1708 (1981). *See also, National League of Cities* v. *Usery*, 426 U.S. at 851, 855, 96 S.Ct. at 2476 (using phrase "integral governmental functions").

[11] It bears noting that in this respect a determination of whether a function is integral requires an assessment of the effect of the federal regulation, which is in fact the third factor which the courts have considered in making sovereignty determinations. *See* pp. 678-679 *supra*.

addressing specific problems such as water usage, farming, railroads, utilities, etc. Even though such functions may have been traditionally carried out by the state, federal regulation thereof is not prohibited because the functions do not produce significant consequences affecting all persons in the state and thus are not, in our definition of the term, "integral" functions.[12]

With these principles in view, we find that Eastside's function of providing mental health services to the citizens of Alabama is not an integral function as we have interpreted the term. The function involved here addresses a specific problem affecting a limited class of persons within the state. Any effect the FLSA will have if applied to Eastside is not one that is so extensive that it will be felt by the entire citizenry of Alabama.

REVERSED.

JAMES C. HILL, Circuit Judge, specially concurring:

I concur in the judgement reversing this case.

The majority opinion observes:

> "For whatever reason, Alabama did not elect to operate Eastside as a state institution wih state employees; instead it set up a not for profit corporation with a separate, independent board of directors to administer it. Whatever may have been the state's reason for doing it this way, it must live with the consequences. It cannot claim an immunity based on a condition which it itself sought to avoid."

Additional language expands upon and explains this reason for our judgment, and I join in the opinion to that extent.

Insofar as the opinion reaches conclusions based upon the hypothetical ("In short we believe that even if the State of

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[12] Under our test regarding integral functions, the Court in *Hodel* could have easily found that the function of regulating the mining industry, while perhaps traditional, as the state parties argued, was nevertheless nonintegral because the federal interference did not affect the entire state citizenry.

Alabama had chosen to operate Eastside as a state agency, . . ."), I am not willing to join. Were it necessary to express a conclusion, I am presently inclined to the view that such an operation would be exempt.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 79-G-0524-S

DAVID R. WILLIAMS,

Plaintiff,

v.

EASTSIDE MENTAL HEALTH CENTER, INC., a corporation,

Defendant.

FILED
March 24, 1981

ENTERED
March 24, 1981

ORDER

Pursuant to this court's order filed June 26, 1980, in the above-styled cause that the case be reopened in order to address the issue raised by the plaintiff in his motion for reconsideration filed on April 21, 1980, the court has considered the pleadings and submissions of counsel and is of the opinion that the plaintiff's motion for reconsideration is due to be denied.

Accordingly, it is ORDERED, ADJUDGED and DECREED that plaintiff's motion for reconsideration be and it hereby is DENIED, in conformity with the Memorandum Opinion being entered contemporaneously herewith.

DONE and ORDERED this 24th day of March 1981.

/s/ J. Foy Guin, Jr.
United States District Judge
J. FOY GUIN, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 79-G-0524-S

DAVID R. WILLIAMS,

Plaintiff,

v.

EASTSIDE MENTAL HEALTH CENTER, INC., a corporation,

Defendant.

FILED
March 24, 1981

ENTERED
March 24, 1981

MEMORANDUM OPINION

This is an action arising under the minimum wage and hour provisions of the Fair Labor Standards Act (FLSA) as amended, 29 U.S.C. § 201 *et seq.* It came to be heard originally by this court upon cross-motions for summary judgment by both plaintiff and defendant. Summary judgment was entered for defendant on April 10, 1980, based on a finding that defendant was constitutionally immune from application of the Fair Labor Standards Act due to the tenth amendment, as addressed in *National League of Cities* v. *Usery*, 426 U.S. 833, 96 S. Ct. 2465, 49 L. Ed. 2d 245 (1976). Plaintiff petitioned for reconsideration on the grounds that defendant was not shown to be a state government agency. He was joined by the Secretary of Labor as *amicus curiae*. This court entered an order on June 26, 1980, that the case be reopened for good cause shown in order to address the issue raised by plaintiff in his motion to reconsider.

Plaintiff was employed by defendant, Eastside Mental Health Center, from February 1977 to May 1979. During this

period his work required him to be on the premises for a continuous 96-hour period followed by 96 hours of off-duty time. Plaintiff alleges that defendant did not pay him compensation as prescribed by provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 206, 207. He claims the additional compensation allegedly due him under the FLSA. Defendant claims exemption from the Act due to the holding in *National League of Cities*.

The principle issue in this action is whether employees of defendant Eastside Mental Health Center are covered under the minimum wage and maximum hour provision of the Fair Labor Standards Act. Specifically, the questions to be resolved are: (1) what test is to be used to determine if an entity's operation is an "integral governmental function" within the scope of *National League of Cities* v. *Usery*, and (2) does defendant corporation qualify under that test and thereby become exempt from compliance with the Act through tenth amendment protection?

In *National League of Cities*, the Supreme Court held the 1974 amendment to the Act involving wage and hour provisions was unconstitutional as applied in general to state and local government employees because those sections of the Act "impermissibly interfere with the integral governmental functions of these bodies." 426 U.S. at 851, 96 S. Ct. at 2474, 49 L. Ed. 2d at 257. The Court found that federal wage and hour determinations which respect to "functions . . . which state and local governments are created to provide, [involving] services . . . which the States have traditionally afforded their citizens," were matters essential to the separate and independent existence of those governments and, therefore, beyond the reach of congressional power under the commerce clause. *National League of Cities*, *supra*, at 851. The Court expressly overruled *Maryland* v. *Wirtz*, 392 U.S. 183, 88 S. Ct. 2017, 20 L. Ed. 2d 1020 (1968), which had upheld the extension of the Act to employees of state schools, hospitals and like public institutions.

This immunity, however, was limited by the Court to those public services or activities which involve traditional or in-

tegral governmental functions. *National League of Cities* v. *Usery*, 426 U.S. at 852, 96 S. Ct. at 1474, 49 L. Ed. 2d at 257 (1976); *Public Services Co. of North Carolina* v. *Federal Energy Regulatory Commission*, 587 F.2d 716, 721 (5th Cir. 1979). The Court described the immune activities as those "performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services." 426 U.S. at 851, 96 S. Ct. at 2474, 49 L. Ed. 2d at 257.

The scope of this limitation is the central issue in this case. By overruling *Wirtz*, the Court implicitly included the operation of public schools, hospitals and like public health care institutions within the category of traditional integral governmental functions. However, *National League of Cities* does not articulate a specific test to be applied in determining whether a particular governmental function should be deemed to be within this protected area of state sovereignty.

Plaintiff argues that the test to be used is the two-step test that the National Labor Relations Board (NLRB) uses to determine if it has jurisdiction over a labor dispute. The Fifth Circuit adopted this test in *NLRB* v. *Highview, Inc.*, 590 F.2d 174 (5th Cir. 1979), in order to determine if a nursing home qualified as a political subdivision which would be exempt from the National Labor Relations Act (NLRA). According to the Fifth Circuit's decision in *Highview*, an employer is "a political subdivision if either (1) the entity was created directly by the state, so as to constitute a department or administrative arm of the government, or (2) if the entity is administered by individuals who are responsible to public officials or to the general electorate." *Highview*, at 176.

Plaintiff contends that defendant must first meet the NLRB's test in *Highview* as a prerequisite to a determination of whether or not its operation involves a traditional or integral governmental function. Plaintiff argues that defendant is covered by the Fair Labor Standards Act as it is an "enterprise engaged in commerce" as defined by 29 U.S.C. § 203(5) and does not constitute a political subdivision or agency of the state

government even though it might be fulfilling an integral governmental function. It is plaintiff's belief that *National League of Cities* does not apply until the entity first qualifies as a political subdivision or state agency under the test articulated in *Highview*.

Defendant claims that it is a public corporation performing an integral governmental function and is therefore exempt from the FLSA because of *National League of Cities*. It contends that the proper test is not *Highview*, but the one adopted by the Sixth Circuit in *Amersbach* v. *City of Cleveland*, 598 F.2d 1033 (6th Cir. 1979).

Amersbach states that certain elements are common to those services which the court has characterized as typical of those performed by governments. These elements are: (1) the government service or activity benefits the community as a whole and is available to the public at little or no direct expense, (2) the service or activity is undertaken for the purpose of public service rather than for pecuniary gain, (3) government is the principal provider of the service or activity, and (4) government is particularly suited to provide the service or perform the activity because of a community-wide need for the service or activity. *Amersbach*, 1037.

The defendant contends that even if the *Highview* test is employed, it qualifies as a political subdivision and should be held exempt from compliance with the FLSA. Finally, defendant argues that if it is not found to fall under a *National League of Cities* exemption, it is excused from liability by 29 U.S.C. § 259.

This court holds that Eastside is exempted from compliance with the FLSA, as it falls under *National League of Cities* protection, using the *Amersbach* test. Alternatively, it also is exempt from compliance using the *Highview* test, as defendant qualifies as a political subdivision under part two of that test in that its administrators are responsible to public officials.

The present case should be viewed in relation to the four elements noted above in *Amersbach*. Furthermore, the *High-*

view test involves the NLRA, not the FLSA. It is used merely to determine whether or not an employer is covered by the NLRA and therefore subject to the jurisdiction of the NLRB. The FLSA has no such board that oversees the implementation of the Act.

It should be emphasized that the main issue is whether the defendant provides a traditional governmental service, not merely whether or not it is a political subdivision or public corporation. The FLSA may not be applied "to directly displace the States' freedom to *structure integral operations* in areas of traditional governmental functions." *National League of Cities*, 426 U.S. at 852, 96 S. Ct. at 2475, 49 L. Ed. 2d at 257 (emphasis added). In this action, the defendant is one of twenty-five community mental health centers in Alabama. Together, these twenty-five centers form the entire mental health system established for and by the State of Alabama. Two are operated by purely governmental agencies, twenty are incorporated as public corporations under Code of Alabama 1975, Section 22-51-1, *et seq.*, and three, including the defendant, are incorporated as nonprofit corporations under Code of Alabama 1975, Section 10-3-1, *et seq.* Because the community mental health center statute allows only one facility per county to be incorporated under it and another agency had already filed for incorporation pursuant to that statute in the three-county area of Jefferson, Blount and St. Clair, the defendant was incorporated under the statute pertaining to nonprofit corporations.

Defendant acts jointly with this other agency, known as the Jefferson-Blount-St. Clair Mental Health/Mental Retardation Authority (hereinafter, "the Authority"), to carry out the purposes and functions of a Section 22-51-1 corporation. The Authority has full and absolute power of ratification and approval of defendant's operating budget, articles of incorporation and bylaws. Additionally, the defendant, Eastside, has been assigned a specific geographical area, by the State, in which to provide services through the Alabama Community Mental Health Facilities Plan.

For these reasons it is apparent that defendant is part of the "structure" that the State of Alabama set up to provide mental health care services. These services are clearly of those types for which the government is "particularly suited" and for which there is community-wide need, within the factors set out in *Amersbach*. These services are traditional governmental services for which the provider is shielded from compliance with the FLSA by *National League of Cities*.

Alternatively, if defendant must first satisfy the *Highview* test as a political subdivision before an assessment can be made of whether or not if is performing an integral governmental function, it also meets this additional requirement. In *Highview*, a nursing home was held not to be a political subdivision primarily because its directors were "self perpetuating" and "not directly responsible to the public officials of the county." *Highview*, at 177.

In this case, Eastside's board of directors is not elected but externally appointed by agencies ranging from public or governmental to private organizations, the majority of which come from the public or governmental sector. Furthermore, defendant must submit copies of minutes of every board of directors' meeting to the State Department of Mental Health and to the Authority. Additionally, Eastside is subject to: audit and review by the State Examiners of Public Accounts for the State of Alabama, periodic visitation and review by the Department of Mental Health for the State of Alabama, mandatory compliance with the Standards for Community Mental Health Centers established by the Department of Mental Health for the State of Alabama, and compliance with the State of Alabama's competitive bid laws when purchasing goods. Defendant is exempt from payment of state sales tax, is a member of, and its employees covered by, the State of Alabama retirement and pension system, and is prohibited from owning any real property.

The extent of state control and accountability of defendant's administrators to state agencies and public officials renders it a political subdivision under part two of the *Highview* test. East-

side is subject to more controls of the state than the private operator of a county hospital was in *Board of Trustees of Memorial Hospital* v. *NLRB*, 624 F.2d 177 (10th Cir. 1980), in which the hospital was found to be a political subdivision. In addressing the political subdivision issue in *National League of Cities*, the Supreme Court stated:

> As the denomination "political subdivision" implies, the local governmental units which Congress sought to bring within the Act derive their authority and power from their respective States. Interference with integral governmental services provided by such subordinate arms of a state government is therefore beyond the reach of congressional power under the Commerce Clause just as if such services were provided by the state itself.

National League of Cities, 426 U.S. at 855, n. 20, 96 S. Ct. at 2476, n. 20, 49 L. Ed. 2d at 260, n. 20 (emphasis added).

In this action Eastside is performing an integral governmental service as a subordinate arm of the state. It is one of the twenty-five health centers which make up the total mental health care system of the State of Alabama.

For the reasons stated herein, final judgment is due to be granted to defendant in this action.

A separate order in conformity herewith is being entered.

DONE this the 24th day of March 1981.

/s/ J. Foy Guin, Jr.
United States District Judge
J. Foy Guin, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 79-G-0524-S

DAVID R. WILLIAMS,

Plaintiff,

v.

EASTSIDE MENTAL HEALTH CENTER, INC., a corporation,

Defendant.

FILED
April 9, 1980

ENTERED
April 10, 1980

FINAL ORDER GRANTING SUMMARY JUDGMENT

This cause came before the court on cross-motions by plaintiff and defendant, each seeking summary judgment in his own behalf, thereby admitting the facts on the issue of liability, as before the court, without dispute. Having considered the pleadings, submissions of counsel, and applicable law, the court is of the opinion that judgment is due the defendant as a matter of law, that there is no just reason for delay in issuing a final judgement, and that, therefore, defendant's motion should be granted, and plaintiff's denied, in conformity with the Memorandum Opinion entered contemporaneously herewith. Accordingly, it is

ORDERED, ADJUDGED and DECREED that plaintiff's motion for summary judgment be and the same hereby is DENIED; and it is

FURTHER ORDERED that defendant's motion for summary judgment be and the same hereby is GRANTED; and it is

FURTHER ORDERED that final judgment be and the same hereby is GRANTED in favor of the defendant and against the plaintiff, and that the plaintiff shall have and recover nothing of the defendant in this case.

DONE and ORDERED this 9th day of April 1980.

/s/ J. Foy Guin, Jr.
United States District Judge
J. FOY GUIN, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 79-G-0524-S

DAVID R. WILLIAMS,

Plaintiff,

v.

EASTSIDE MENTAL HEALTH CENTER, INC., a corporation,

Defendant.

FILED
April 9, 1980

ENTERED
April 10, 1980

MEMORANDUM OPINION

This is an action arising under the minimum wage and maximum hour provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq.* It is now being heard on the cross-motions of both plaintiff and defendant for summary judgment.

The central issue involved in the motions for summary judgement is whether employees of the Eastside Mental Health Center are covered under the minimum wage and maximum hour provisions of the Fair Labor Standards Act. Resolution of this issue turns on whether the operation of the Eastside Mental Health Center is an "integral government function" within the scope of *National League of Cities* v. *Usery*, 426 U.S. 833, 96 S. Ct. 2465, 49 L. Ed. 2d 245 (1976).

The Fair Labor Standards Act was amended in 1974, Pub. L. No. 93-259, 88 Stat. 55, to extend its wage and hour provisions to virtually all state and local government employees. 29 U.S.C. § 203(d),(s)(5), (x). The plaintiff in the present case was

a home manager at Eastside Mental Health Center, a corporation incorporated under the Alabama Non-Profit Corporation Act.

The plaintiff has alleged that the Eastside Mental Health Center is an "enterprise engaged in commerce" as defined by 29 U.S.C. § 203(s), as the defendant has admitted that two or more of its employees have handled goods which moved in interstate commerce and the defendant has testified that the "Transitional Home" cared for the mentally ill who were residents there (McManus deposition at 15; Stockdale deposition 17-9). The plaintiff alleges that during his employment the defendant required the plaintiff to be on duty during a continuous 96-hour period, followed by 96 hours of free time, which resulted in a number of months in which the plaintiff worked in excess of 40-hour weeks at rates of pay less than that prescribed under the Act, 29 U.S.C. § 206(a).

The defendant argues that (1) the defendant is a public corporation and, therefore, under *National League of Cities* v. *Usery*, *supra*, is exempt from compliance with, or application of, the Fair Labor Standards Act, and (2) the defendant, Eastside Mental Health Center, Inc., is exempt from liability by § 259 of said Act.

In *National League of Cities*, the Supreme Court held the 1974 wage and hour provisions of the Act unconstitutional as they applied to state and local government employees generally because those sections of the Act "impermissibly interfere with the integral governmental functions of these bodies." 426 U.S. at 851, 96 S. Ct. at 2474, 49 L. Ed. 2d at 257. The Court found that federal wage and hour determinations with respect to "functions . . . which state and local governments are created to provide, [involving] services . . . which the states have traditionally afforded their citizens," were matters essential to the separate and independent existence of those governments and, therefore, beyond the reach of congressional power under the commerce clause. *Id* at 851. The Court expressly overruled *Maryland* v. *Wirtz*, 392 U.S. 183, 88 S. Ct. 2017, 20 L. Ed. 2d

1020 (1968), which had upheld extension of the Act to employees of state schools, hospitals and like public institutions.

However, the Supreme Court limited the scope of this immunity to those public services or activities which involve traditional or integral governmental functions. *National League of Cities* v. *Usery*, 426 U.S. at 852, 96 S. Ct. at 1474, 49 L. Ed. 2d at 257 (1976); *Public Service Co. of North Carolina, Inc.* v. *Federal Energy Regulatory Commission*, 587 F.2d 716, 721 (5th Cir. 1979). The Court spoke of those activities "performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services." 426 U.S. at 851, 96 S. Ct. at 2474, 49 L. Ed. 2d at 257. The meaning of this limitation is the central issue in this case. By overruling *Wirtz*, the Court implicitly included the operation of public schools, hospitals and like public health care institutions within the category of traditional integral government functions. However, *National League of Cities* does not articulate a specific test to be applied in determining whether a particular government function should be deemed to be within this protected area of state sovereignty.

The Sixth Circuit in *Amersbach* v. *City of Cleveland*, 598 F.2d 1033 (6th Cir. 1979), however, holds that certain elements are common to those services which the court has characterized as typical of those performed by governments. These elements are: (1) the government service or activity benefits the community as a whole and is available to the public at little or no direct expense; (2) the service or activity is undertaken for the purpose of public service rather than for pecuniary gain; (3) government is the principal provider of the service or activity; and (4) government is particularly suited to provide the service or perform the activity because of a community-wide need for the service or activity. *Amersbach* at 1037.

The present case should be viewed in relation to the elements noted above. It should be emphasized that the issue is not merely whether the defendant is a public corporation, but

whether it provides a traditional government function. The defendant corporation is incorporated as a non-profit corporation under Code of Alabama 1975, § 10-3-1, rather than the community mental health center statute, Code of Alabama 1975, § 22-51-1, because the statute allows only *one* facility *per county* to be incorporated under it and another agency had already filed for incorporation under that statute. The defendant acts jointly with this other agency, known as the Jefferson-Blount-St. Clair Mental Health/Mental Retardation Authority (hereinafter, "the Authority"), to carry out the purposes and functions of a § 22-51-1 corporation. The Authority has full and absolute power of ratification and approval of the defendant's operating budget, Articles of Incorporation and By-Laws. See Articles Four and Twelve of the By-Laws (Board Book). The directors of defendant are not elected, but are appointed by various public and governmental agencies and entities, pursuant to the requirements of § 22-51-1 *et seq.*, Code of Alabama 1975, the standards with which the defendant must comply in order to operate a center, and 42 U.S.C. § 2681 *et seq.* See Article Six of the By-Laws.

Additionally, the defendant has been assigned a specific geographical area, by the State, in which to provide services, Region M-5 as defined by the Alabama Community Mental Health Facilities Plan. The defendant is subject to audit by the Department of Examiners of Public Accounts and must submit to visitation, review, certification and evaluation by numerous state and federal agencies.

Thus, it appears that the defendant is performing an integral government function by providing services envisioned by Code of Alabama 1975, § 22-51-1, without pecuniary gain. Additionally, it is clear that the providing of mental health services is a service for which the government is "particularly suited" and for which there is a community-wide need, within the factors set out in *Amersbach* v. *City of Cleveland*, *supra*. Thus, this court holds that the Eastside Mental Health Center is a public corporation under the tests set out in *Amersbach* and is therefore exempt from compliance with the Fair Labor

Standards Act under *National League of Cities* v. *Usery*, *supra*.

For the reasons states herein, final judgment is due to be granted the defendant in this action.

A separate order in conformity herewith is being entered.

DONE this 9th day of April 1980.

/s/ J. Foy Guin, Jr.
United States District Judge
J. FOY GUIN, JR.

29 U.S.C. § 206 (Supp. IV 1980), reads in pertinent part as follows:

§ 206. Minimum wage

(a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section;

* * *

(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974 wages at the following rate: Effective after December 31, 1977, not less than the minumum wage rate in effect under subsection (a)(1) of this section.

29 U.S.C. § 207 (1976), reads in pertinent part as follows:

§ 207. Maximum hours

(a) (1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives

compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

CODE OF ALABAMA 1975
TITLE 22

CHAPTER 51.

REGIONAL MENTAL HEALTH PROGRAMS AND FACILITIES.

Sec.

22-51-1. Definitions
22-51-2. Incorporation of public corporations—Authorized.
22-51-3. Same—Application—Contents.
22-51-4. Same—Same—Approval.
22-51-5. Same—Certificate of incorporation—Contents.
22-51-6. Same—Same—Execution and recording.
22-51-7. Same—Same—Amendments.
22-51-8. Board of directors—Composition; appointment, qualifications, terms and compensation of members; vacancies; executive committee.
22-51-9. Same—Meetings; quorum; constitution and bylaws.
22-51-10. Professional advisory committee.
22-51-11. Powers of corporation.
22-51-12. Control of facilities and programs.
22-51-13. Taxation exemption.
22-51-14. Appropriations by local governing bodies.

§ 22-51-1. Definitions

For the purposes of this chapter, unless otherwise indicated, the following terms shall have the meanings respectively ascribed to them by this section:

(1) ALABAMA MENTAL HEALTH BOARD. The public corporation of that name established by chapter 50 of this title as part of the state department of mental health.

(2) CONSTRUCTION and CONSTRUCT. Such terms include:

a. The construction of new buildings and the expansion, remodeling and alteration of existing buildings, including architects' fees; and

b. Equipping new buildings and existing buildings, whether or not expanded, remodeled or altered.

(3) COUNTY. Any county in the state.

(4) DEPARTMENT OF MENTAL HEALTH. The department of the state government having that name which was created and established by chapter 50 of this title.

(5) FACILITIES. Structures, equipment and furnishings, or any part or combination thereof, which are used, useful or capable of use and the use thereof in connection with the implementing and operation of programs as defined in this section.

(6) GOVERNING BODY. The county commission of a county or the council, commission or other like governing body of a municipality.

(7) INCORPORATORS. The natural persons forming a public corporation organized pursuant to the provisions of this chapter.

(8) PERSON. Such term includes, but is not limited to , a natural person, the United States of America, one of the several states, a public or private corporation, a municipality, a county or an agency, department or instrumentality of a county, of a municipality, of one or more of the several states or of the United States of America.

(9) PROGRAMS.

a. The planning and taking of other steps leading to comprehensive state and community action to combat all forms of mental or emotional illness or debility, including, but not limited to, alcoholism, drug addiction, epilepsy and mental retardation;

b. Studies of the needs and available resources of the state in relation to the above, the development of public awareness of the said disabilities and the need for combating them and the coordination of state and local activities relating to the various aspects of mental or emotional illness or debility, including, but not limited to, alcoholism, drug addiction, epilepsy and mental retardation and their prevention, treatment or amelioration;

c. The conducting of research relating to human development, whether biological, medical, social or behavioral, which may assist in finding the causes and means of prevention of

mental or emotional illness or debility, including, but not limited to, alcoholism, drug addiction, epilepsy and mental retardation or in finding means of ameliorating the effects of same;

d. The providing of any one or more of the following services:

1. Inpatient;
2. Outpatient;
3. Partial hospitalization;
4. Emergency care;
5. Community education and consultation;
6. Diagnosis;
7. Evaluation;
8. Rehabilitation;
9. Precare;
10. Residential care;
11. Aftercare; and
12. The prevention of all forms of mental or emotional illness, including, but not limited to, alcoholism, drug addiction, epilepsy or mental retardation.

e. The clinical training of physicians and other technical and specialized personnel needed for research, diagnosis, treatment, education, training or care of the mentally or emotionally ill or debilitated, including, but not limited to, those persons suffering from alcoholism, drug addiction, epilepsy or mental retardation; and

f. Any combination of any of the foregoing. (Acts 1967, No. 310, p. 853, § 1.)

§ 22-51-2. Incorporation of public corporations—Authorized.

By proceeding in the manner set forth in this chapter, any number of natural persons, not less than three, may form a public corporation to contract with the state board of health or

the Alabama mental health board in constructing and operating facilities and in carrying out programs in particular areas of the state. (Acts 1967, No. 310, p. 853, § 2.)

§ 22-51-3. Same—Application—Contents.

The said natural persons, referred to in section 22-51-2, shall file a written application with each governing body from which they desire authority to incorporate. Such applications shall:

(1) Describe in general terms the area of the state which will be served by the proposed facilities, which description will be sufficient if stated with reference to counties, municipalities, unincorporated communities or any part or combination thereof;

(2) State the location of the principal office of the proposed corporation;

(3) Submit such documents or evidence which the incorporators may consider appropriate, which shall include documents from the Alabama mental health board and the state board of health showing that the facilities and programs, which the incorporators propose to establish will be in accordance with minimum standards and criteria established by such boards;

(4) State which aspects of the programs, as defined in this chapter, the said incorporators propose to implement;

(5) State that each of the incorporators is a resident of the area which will be served by such proposed facilities and programs; and

(6) Request that each governing body, with which such application is filed, adopt a resolution approving the formation of the proposed corporation. (Acts 1967, No. 310, p. 853, § 3.)

§ 22-51-4. Same—Same—Approval.

Upon the adoption by each governing body to which an application was sent of a resolution approving the formation of the said corporation, the incorporators, or not less than three

of them, shall proceed to complete the incorporation in the manner provided in this chapter. (Acts 1967, No. 310, p. 853, § 4.)

§ 22-51-5. Same—Certificate of incorporation—Contents.

The certificate of incorporation shall state:

(1) The names of the persons forming it, together with their addresses, and that each is a resident of the area which will be served by the proposed corporation;

(2) The name of the corporation;

(3) The location of the principal office of the corporation;

(4) The statement contained in the application which describes the area which will be served by the proposed corporation;

(5) The name of each governing body with which an application was filed in accordance with section 22-51-3;

(6) A statement of which aspects of the programs the corporation will implement; and

(7) Any other matters that the incorporators may choose to insert that are not inconsistent with this chapter or with other laws of the state. (Acts 1967, No. 310, p. 853, § 6.)

§ 22-51-6. Same—Same—Execution and recording.

A certificate of incorporation, in the form provided in section 22-51-5, shall be signed and acknowledged by the incorporators before an officer authorized by the laws of the state to take acknowledgments to deeds and shall have attached thereto a certified copy of each of the resolutions provided for in section 22-51-4 and a certificate by the secretary of state that the name proposed for the corporation is not identical to that of any other corporation organized under the laws of the state or so nearly similar thereto as to lead to confusion and uncertainty. The certificate of incorporation, together with the documents required by the preceding sentence to be attached thereto, shall be filed for record in the office of the judge of probate of the county specified in the certificate of incorporation as the coun-

ty in which the principal office of the corporation shall be located. The said judge of probate shall forthwith receive and record the same. When the certificate of incorporation and attached documents have been so filed, the corporation referred to therein shall come into existence and shall constitute a public corporation vested with the rights and powers granted in this chapter under the name set forth in such certificate of incorporation. (Acts 1967, No. 310, p. 853, § 5.)

§ 22-51-7. Same—Same—Amendments.

The certificate of incorporation may be amended, from time to time, to provide for any objective that was not included in the original certificate of incorporation by proceeding as follows:

(1) The board of directors of the corporation, subject to the approval of the Alabama mental health board, shall first adopt a resolution setting forth and approving the proposed amendment.

(2) The proposed amendment shall then be submitted to each governing body which has appointed or is entitled to appoint a member of the said board as it is constituted at the time of the adoption of the said resolution setting forth and approving the proposed amendment.

(3) If a governing body to which the proposed amendment is submitted shall find that the said amendment is in the public interest, and prima facie proof that it is in the public interest shall consist of proof that it has been approved by the Alabama mental health board, it shall adopt a resolution approving the said amendment, if any governing body to which the proposed amendment was submitted shall find that the said amendment is not in the public interest, it shall adopt a resolution disapproving the said amendment.

(4) A proposed amendment shall become effective immediately upon its being filed in the office of the judge of probate of the county in which the said principal office is located, and if the amendment provides for a change in the location of the principal office, it shall become effective immediately upon the filing of the original certification of incorporation, together with the amendment thereto, in

the office of the judge of probate of the county in which the said principal office is to be relocated, as shown by the said amendment. (Acts 1967, No. 310, p. 853, § 11.)

§ 22-51-8. Board of directors—Composition; appointment, qualifications, terms and compensation of members; vacancies; executive committee.

Each corporation shall be governed by a board of directors of nine or more members, selected as provided in this section. Each governing body which authorized the formation of the corporation shall appoint three members of the said board of directors; provided, that if the area to be served by the corporation shall be located wholly within an area governed by a single governing body, the said governing body shall appoint nine members to the said board; provided further, that if the said area to be served shall be located wholly within an area governed by at least two, but not more than two, governing bodies, each of the said governing bodies shall be entitled to appoint five members of the said board. If there are more than 16 directors, they shall appoint from among their number an executive committee consisting of nine members, which shall have and exercise the powers and authority of the board of directors, subject to the general supervision and control of the said board. Every member of the board of directors must be a resident of the area which he represents and which is to be served by the proposed facilities. The terms of the initial members of the board appointed by the governing bodies, as provided above, shall begin immediately upon their appointments and shall end at noon on April 1 of the succeeding odd-numbered calendar years following the appointments as designated by said governing body at the time of their said appointments. Thereafter, the term of office of each director shall be six years. The terms of office of the said directors shall be arranged so that the terms of office of approximately one third of all directors will end at noon on April 1, in each odd-numbered calendar year. A member of the board of directors shall hold office until his successor has been appointed and qualified. The respective appointing authorities shall appoint or reappoint a qualified person as a member of the board of

directors whenever a member's term expires or whenever a position becomes vacant for any other reason. A member of the board of directors shall receive no compensation for his services. (Acts 1967, No. 310, p. 853, § 7.)

§ 22-51-9. Same—Meetings; quorum; constitution and bylaws.

The board of directors shall hold monthly meetings and such special meetings as may be called, from time to time, on at least two days' notice given by the chairman or by any three members thereof, said notice to be given to each member thereof; provided that where the board of directors exceeds 16 members, the executive committee shall meet at least monthly and the complete board of directors shall meet at least every six months. The said board shall adopt a constitution and bylaws, to be subject to this chapter, the certificate of incorporation and laws of the state of Alabama. Three members of the said board shall constitute a quorum for the transaction of business. A copy of the constitution and bylaws shall also be filed with the Alabama mental health board. (Acts 1967, No. 310, p. 853, § 8.)

§ 22-51-10. Professional advisory committee.

The board of directors of the corporation shall appoint a professional advisory committee of three or more members, one of which must be a physician practicing in the area of the board's jurisdiction. (Acts 1967, No. 310, p. 853, § 9.)

§ 22-51-11. Powers of corporation.

Any corporation organized pursuant to the provisions of this chapter, is hereby authorized and empowered to exercise the following powers in addition to others granted in this chapter:

(1) To construct and maintain facilities as defined in section 22-51-1;

(2) To cooperate and contract with the state board of health for the construction of such facilities;

(3) To cooperate and contract with the Alabama mental health board for the construction, operation and maintenance of such facilities and for the operation and execution of such programs as it has elected to implement;

(4) To take over by purchase, lease or otherwise any hospital or other facilities to be used for carrying out such programs as it has elected to implement;

(5) To arrange with any appropriate local or state agencies for the opening or closing of streets, roadways, alleys or other rights-of-way or easements and to exercise the power of eminent domain;

(6) To purchase, lease or rent any land, building, structure or facilities needed in its operations;

(7) To enter upon buildings or property in order to conduct investigations or to make surveys or soundings;

(8) To obtain options upon, and to acquire by purchase, gift, grant, bequest, devise or otherwise, any property, or interest therein, from any person;

(9) To sell, exchange, transfer, assign or pledge any property, or any interest therein, to any person;

(10) To improve any such property;

(11) To insure against such risks as it may deem advisable;

(12) To borrow money upon its bonds, notes, warrants, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues;

(13) To have perpetual succession;

(14) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(15) To determine reasonable fees for services which it makes available to the public and collect such fees, unless, on application and investigation, it is determined that the person receiving such services is unable to pay the established fee, and in such case, such amount as he is able to pay will be collected;

(16) To make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this chapter;

(17) To carry into effect the powers and purposes conferred by this chapter; and

(18) To do any and all other things necessary or convenient to carry out the powers given in this chapter. (Acts 1967, No. 310, p. 853, § 10.)

§ 22-51-12. Control of facilities and programs.

Nothing in this chapter shall be construed to mean that the facilities and programs provided for in this chapter are to be under the direction or control of any person other than the board of directors appointed by the governing bodies, as provided in section 22-51-8, as long as said board of directors complies with the minimum standards of construction, maintenance and operation adopted by the state board of health and the minimum standards and criteria established by the Alabama mental health board. (Acts 1967, No. 310, p. 853, § 13.)

§ 22-51-13. Taxation exemption.

The corporations authorized in this chapter and their property, including bonds, conveyances, mortgages, leases and deeds, and all income from such property and the operation of programs shall be exempt from all taxation and no excise tax may be imposed on any corporation for the privilege of engaging in any of the activities authorized by this chapter; provided, that the corporation must adhere to minimum standards for licensure as provided by chapter 50 of this title. (Acts 1967, No. 310, p. 853, § 14.)

§ 22-51-14. Appropriations by local governing bodies.

The governing bodies which are entitled to appoint a member of the board of directors are hereby authorized to appropriate their respective shares of the cost of construction of the facilities as determined upon by agreement between the board of directors and the respective governing bodies and the said governing bodies are hereby authorized to appropriate their respective shares of the cost of operating such programs as the corporation shall have elected to implement, as determined by agreement between the Alabama mental health board, the board of directors and the respective governing bodies, not-

withstanding the fact that the said facilities may be located in a county other than the county whose governing body makes the said appropriations. (Acts 1967, No. 310, p. 853, § 12.)

CODE OF ALABAMA 1975
TITLE 22

CHAPTER 50.

Department of Mental Health and Mental Health Board.

* * *

§ 22-50-17. Certificate or license required to operate facility for care or treatment of mental or emotional illness.

No person, partnership, corporation or association of persons shall operate a facility or institution for the care or treatment of any kind of mental or emotional illness as defined in this chapter, without being certified by the board or licensed by the state board of health; provided, that nothing in this section shall be construed so as to require a duly authorized physician, psychiatrist, psychologist, social worker or Christian Science practitioner to obtain a license for treatment of patients in his private office, unless he keeps two or more patients in his office for continuous periods of 24 hours or more in one week. (Acts 1967, No. 881, p. 1649, § 12.)

STANDARDS FOR COMMUNITY MENTAL HEALTH CENTERS

[SEAL]

ADOPTED BY THE
ALABAMA MENTAL HEALTH BOARD FEBRUARY 18, 1971

THIRD REVISION: JUNE, 1978

INTRODUCTION

The standards presented herein have been developed through the combined efforts of the Division of Mental Illness, the community mental health center personnel, and other interested parties. The standards for Alcoholism, Drug Abuse and Mental Retardation are promulgated by those respective divisions. Efforts are made to assure that all standards are compatible. Development, promulgation, and monitoring standards for mental health centers serve the following three purposes:

1. To fulfill the responsibility vested in the Department by Act 881 to monitor and certify community mental health centers.
2. To assure basic quantity and quality of services and their delivery.
3. To improve communication between the Department of Mental Health and the community mental health centers.

Basic Requirements

Each community mental health center must operate under the auspices of a public or private non-profit agency established for that purpose and whose program has been approved by the Alabama Mental Health Board. Such agency may be: a public non-profit corporation, organized under the provisions of Act 310 (1967 Alabama Legislature); a private non-profit corporation, incorporated in compliance with Act 578 (1955 Alabama Legislature); or any other public agency created by the law within the State of Alabama.

All community mental health centers shall offer at a minimum outpatient services, consultation and education services, precare and aftercare services and emergency services.

Applicability

These standards shall apply to all community mental health centers in the State of Alabama. Where there are contractual provisions, regulations, or standards promulgated for the operation of specific services as part of a grant or contract, they shall be executed in addition to the standards listed herein. Community mental health centers shall also comply with all applicable federal, state, and local health, safety, and fire standards.

Monitoring and Certification

Compliance with the standards listed herein will be monitored through site visit reviews. Whenever possible, reviews will be coordinated with appropriate federal and state agencies and regional mental health boards.

An interdisciplinary team will be used for reviews. The composition and size of the team will be determined by the size and structure of the center to be reviewed.

After the on-site visit, a report will be prepared by the team and sent to the center board of directors and other agencies and personnel as appropriate. Within ninety days from receipt of the report, the center will respond to the Department of Mental Health with an action plan which addresses the recommendations of the team. Upon receipt, review, and approval of the action plan by the Department of Mental Health, the center will be certified.

Certification will be granted on the basis of substantial compliance with the applicable standards as listed herein. if the center is not approved for certification, a copy of the report, defining the deficiencies which must be removed before the center can be certified, is sent to the president of the board, the executive officer and other appropriate individuals and agencies.

If a center is not awarded certification, legal action authorized by Act 881 may be initiated.

Appeal

In cases where certification is denied, or there is disagreement with major findings, appeals may be made in writing to the Director of the Division of Mental Illness, Department of Mental Health. If an appeal is not satisfactorily resolved by the director's office, a final appeal may then be made to the Commissioner of Mental Health.

I. ***Mental Health Center Board***

A. ***Board Organization***

1. Each community mental health center shall operate under the auspices of a public or private non-profit agency whose function as a community mental health center board is approved by the Alabama Mental Health Board. Such community mental health center boards may be one of the following:

   a. A public non-profit corporation, [illegible]d under the provisions of Act 310 (1967 Alabama Legislature);

   b. A private non-profit corporation, incorporated in compliance with Act 578 (1955 Alabama Legislature);

   c. Any other public agency created by law within the State of Alabama.

2. When applicable, mental health center boards shall operate under the authority of the regional mental health/mental retardation board (Act 310) which serves as the legal entity for the planning, developing, delivering, and/or monitoring of mental health services at the community level.

3. The community mental health center board shall be organized in such a way as to identify and define the responsibilities of all officers, members, and standing committees.

4. The board, if incorporated under Act 310 or Act 578, shall have available written Articles of Incorporation

which are in accordance with the law authorizing the formation of a board.

5. Proposed changes to the Articles of Incorporation of the board shall be submitted to the Alabama Mental Health Board for approval prior to submission to the governing body/appointing authority for approval, if applicable, and before filing with the Probate Court of the county where the principal office is located.

* * *

D. *Board Meetings*

1. Minutes of board meetings and any hearings, including attachments, shall be submitted to the Department of Mental Health and the regional mental health board (where applicable) as soon as they are approved by the board.
2. Minutes of all meetings shall reflect: a) attendance by name, b) reports of clinical and administrative activities, c) actions taken, d) a review and follow-up of previously tabled discussions.
3. The executive officer, or a representative, shall attend all board meetings.

* * *

E. *Board Responsibilities*

1. The board shall be responsible for:
   a. provision of adequate resources including funds, space, staff, and equipment to operate the programs of the center;
   b. establishment of goals and priorities of the center;
   c. adequacy and quality of services;
   d. establishment of policies and written approval of policy revisions;
   e. delegation of authority for the day-to-day center operations to the executive officer;

f. supervision of policy implementation;

g. coordination of planning efforts with appropriate agencies;

h. provision of adequate insurance to protect the physical and financial resources of the center, the employees, and the board members.

2. No assignment, referral, or delegation of authority to center staff shall excuse the board from its legal, financial, and supervisory responsibilities.

3. Where applicable, the mental health center board shall submit its programs and facility plans through the regional mental health board for its review and approval prior to seeking approval from the Department of Mental Health.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage-Hour Division
Office of the Area Director
474 South Court Street — Aronov Building, Room 130
Montgomery, Alabama 36104

February 23, 1977

Status of Employees of Community Mental Health Centers under the Fair Labor Standards Act

Ms. Molly M. Brooms, Coordinator
Technical Assistance
State of Alabama
Department of Mental Health
502 Washington Avenue
Montgomery, Alabama 36130

This refers to your recent letter asking the present status of employees of community mental health centers under the Fair Labor Standards Act.

On June 24, 1976 the Supreme Court in the case of *National League of Cities* v. *Usery* held that the minimum wage and overtime provisions of the Fair Labor Standards Act do not apply to State and local government employees engaged in activities which are an integral part of traditional government services. It appears that employees of community mental health centers are engaged in such services and are no longer subject to these requirements.

It is our position that the Age Discrimination in Employment Act and Equal Pay Act still apply to State and local governments.

We hope this answers your question. If we can be of further service, please let us know.

James A. Tucker
JAMES A. TUCKER
Area Director

RECEIVED
February 24, 1977
Department of Mental Health
Division of Mental Illness

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage-Hour Division
Office of the Area Director
474 South Court Street — Room 130
Montgomery, Alabama 36104

May 22, 1979

State of Alabama Department of Mental Health
Montgomery, Alabama

Mr. Edward Strachan, Programs Coordinator
Title XX Residential Care Services
for the Mentally Ill
State of Alabama Department of Mental Health
135 South Union Street
Montgomery, Alabama 36130

This is in response to your letter of May 17, 1979, and in further reference to your letter of March 13, 1979 and my answer on March 15, 1979. In your recent letter you indicated that more than fifty percent of the residents of the Mental Health halfway houses have an IQ of more than 69. Furthermore, the majority are able to cook, wash their own clothes, etc. You asked if the program would be subject to the Fair Labor Standards Act based on this information.

The answer is no. As I said in my letter of March 15, 1979, more than fifty percent of the residents would have to have an IQ of 69 or less for the establishment to be subject to the law.

Since the establishment would not be subject to the Act under the circumstances described above, neither would the home manager or any other employee of the establishment be subject to the wage provisions of the law.

I hope this will clarify your questions. If not, please let me know.

James A. Tucker
JAMES A. TUCKER
Area Director

RECEIVED
May 24, 1979
Division of Transitional Services
Department of Mental Health